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Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **24 September 2020**

Public Authority: **NHS South West London Clinical Commissioning Group**

Address: **120 The Broadway**
Wimbledon
London SW19 1RH

Decision (including any steps ordered)

1. The complainant requested information from NHS Merton Clinical Commissioning Group about proposals for Wilson Health and Wellbeing Campus. During the Commissioner's investigation, NHS Merton Clinical Commissioning Group merged to become part of NHS South West London Clinical Commissioning Group ('the CCG'), with the latter taking on the functions of the former.

2. The CCG's position is that it does not hold information falling within the scope of the complainant's request.

3. The Commissioner's decision is as follows:

   - On the balance of probabilities, the CCG does not hold the information the complainant has requested.

   - The CCG breached section 10(1) of the FOIA as it did not confirm it does not hold the information within 20 working days of receiving the request.

4. The Commissioner does not require the CCG to take any remedial steps.

Request and response

5. On 14 February 2018 the complainant wrote to the CCG and requested information in the following terms:

   "This is to amend my request to restrict it to (1) any report or signed letter relating to communications between Merton Council and NHS Merton in respect of the proposals for the Wilson Health & Wellbeing Campus and (2) any correspondence involving any elected member of Merton Council or officer in Merton Council's Environment and Regeneration Department."

6. This request was a refinement of a request the complainant had originally submitted on 21 January 2018. The original request concerned correspondence between all officers and Council members. The CCG had refused that request relied under section 12(1) of the FOIA, which concerns the cost of complying with a request.

7. The CCG responded to the 14 February 2018 request on 26 November 2018. It stated that it does not hold the information the complainant has requested.

8. On 3 December 2018 the complainant requested an internal review.

9. Following the Commissioner's intervention, the CCG provided the complainant with an internal review on 18 June 2020. It maintained its position that it does not hold information falling within the scope of the request of 14 February 2018.

Scope of the case

10. The complainant first contacted the Commissioner on 20 September 2019 to complain about the way his request for information had been handled.

11. The Commissioner's investigation has focussed on whether, on the balance of probabilities, the CCG holds information falling within the scope of the complainant's request. She has also considered the timeliness of the CCG's response. Its internal review is considered under 'Other Matters'.

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Reasons for decision

12. Under section 1(1) of the FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.

13. Under section 10(1) of the FOIA, a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.

14. As is usual, the Commissioner asked the CCG to provide her with a submission justifying its position. She first requested this from the CCG on 13 February 2020 but did not receive a response until 26 August 2020. In this response the CCG simply advised that its position is as explained in its internal review of 18 June 2020.

15. In that review response, the CCG first noted that in his request for a review the complainant had queried why, in its response to his request of 21 January 2018, the CCG had advised that there would be well over 1000 emails relating to Wilson Health and Wellbeing Campus (WHWC) and was now saying that it does not hold any relevant information. The CCG said that that was because the original request concerned all staff and the refined request was limited to elected members. It explained that the refined request dramatically narrows the amount of information captured.

16. The CCG then noted that the complainant's refined request concerned 1) reports or letters "relating to communications" between Merton Council and the CCG about the WHWC proposals and 2) correspondence involving any elected member of Merton Council or officer in a particular Council department.

17. The CCG said that there are very few elected member who would have had any involvement in the WHWC proposals. It said that the elected members who the CCG had identified had conducted searches of their emails, files and folders for information relevant to the request. Those members had confirmed that they do not hold any relevant information.

18. In his request for a review the complainant had said that it was a matter of public record that the CCG had made representations to Merton Council's Environment and Regeneration Department on emerging Local Plan policies for the WHWC site.

19. The CCG's submission to the Commissioner (ie its internal review response) focussed on searches that elected members had carried out.

The Commissioner therefore went back to the CCG on 27 August 2020 and asked it whether CCG officers had also searched for relevant information that they may have sent to elected members or to the Merton Council Department in question. On 16 September 2020 the CCG confirmed that CCG officers had also conducted searches of their emails, files and folders for information relevant to the request. Those officers confirmed that they do not hold information within scope of the complainant's questions.

Conclusion

20. Part one of the complainant's request is for any report or letter relating to communications between Merton Council and the CCG about WHWC. The second part of the request is for any correspondence [from the CCG] involving any Merton Council elected member or officer in Merton Council's Environment and Regeneration Department.

21. The CCG has confirmed that relevant Merton Council elected members have advised that they have searched their emails, files and folders and have not identified any relevant information. The CCG has now also confirmed that its officers have carried out the same searches in respect of correspondence to elected members and officers in Merton Council's Environment and Regeneration Department. Those CCG officers have not identified any information falling within the scope of the complainant's request.

22. The Commissioner considers that the searches the CCG has carried out are adequate. She has decided that, on the balance of probabilities, the CCG does not hold the requested information and has complied with section 1(1)(a) of the FOIA.

23. The complainant submitted his request on 14 February 2018 and the CCG did not confirm it does not hold the information until 26 November 2018. The CCG's response therefore significantly exceeded the 20 working day deadline and breached section 10(1) of the FOIA.

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Other matters

24. Carrying out an internal review is not a formal requirement of the FOIA, but it is a matter of good practice. Internal reviews are discussed in part 5 of the Section 45 Freedom of Information Code of Practice[1]. Internal reviews should be carried out within 20 working days of the request for one; only in the most complex cases should it take longer than that, and up to a maximum of 40 working days.

25. In this case, which is relatively straightforward, the complainant requested a review on 3 December 2018 but did not receive one until 18 June 2020 – some 18 months later. The CCG apologised to the complainant for the delay and noted that this was due to an administrative failure. Even so, this was an unacceptably long delay; the Commissioner expects the CCG to follow the good practice outlined in the above Code of Practice in its handling of future requests for information.

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

26. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

    First-tier Tribunal (Information Rights)
    GRC & GRP Tribunals
    PO Box 9300
    LEICESTER
    LE1 8DJ

    Tel: 0300 1234504
    Fax: 0870 739 5836
    Email: grc@justice.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
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